UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

USC UNIVERSITY HOSPITAL,

Employer

and Case 21-RC-21163

NATIONAL UNION OF HEALTHCARE WORKERS,

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL UNION,
UNITED HEALTHCARE WORKERS-WEST,

Incumbent Union

## DECISION AND DIRECTION OF ELECTION

On September 24, 2009, the National Union of Healthcare Workers, herein called the Petitioner, filed the above-referenced petition seeking an election in two bargaining units consisting of approximately 82 professional employees and 604 service, maintenance, and technical employees, respectively, employed by USC University Hospital, herein called the Employer.[1]

On March 16 through 18, 2010, a hearing in this matter was held before a hearing officer of the National Labor Relations Board, herein called the Board. Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, herein called the Act, the Board has delegated its authority in this proceeding to the undersigned.

[1] As used hereinafter, the acronym "USC" refers to the University of Southern California located in Los Angeles, California. The registered copyright of this acronym does not have periods between the letters.

## I. ISSUES

The threshold issue herein, as raised by the Service Employees International Union, United Healthcare Workers-West, herein called the Incumbent Union, is whether there is a collective-bargaining agreement in effect between the Incumbent Union and USC University Hospital so as to present a contract bar to the instant petition. The Incumbent Union further contends that if there is no contract bar, that the petitioned-for units are inappropriate, in that there should be three units consisting of professional employees, service and maintenance employees, and technical employees, respectively. An additional issue raised by the Incumbent Union is whether other classifications of heretofore unrepresented employees at both the USC University Hospital and Norris Cancer Hospital should be included in any appropriate units, inasmuch as the two entities are both owned by the University of Southern California (USC).

## II. SUMMARY

Based upon the record, including the post-hearing briefs filed by the parties, I find there is no contract bar based on the lack of evidence of a signed contract between the Incumbent Union and the Employer. I further find that, contrary to the contentions of the Incumbent Union, that the petitioned-for units are appropriate ones and that there is no basis for accreting additional unrepresented employees into those units. Accordingly, I shall direct certification elections in the two petitioned-for units.

## III. FACTS

A. Bargaining History

Prior to April 1, 2009, USC University Hospital was owned by Tenet Healthcare Corporation, herein called Tenet. On June 23, 2004, the Board certified the Incumbent Union as the exclusive collective-bargaining representative for a unit of service, maintenance, and technical employees, and a unit of professional employees, respectively, at USC University Hospital.

In about 2007, the Incumbent Union executed a collective-bargaining agreement, herein called the Master Agreement, with Tenet for a single state-wide unit for 14 Tenet-owned hospitals, including USC University Hospital. The Master Agreement was effective by its terms from January 1, 2007 through March 31, 2011.

Subsequently, about January 2009, in apparent anticipation of the sale of USC University Hospital, the Incumbent Union and Tenet executed a separate collective-bargaining agreement, herein called the Agreement, which purported to contain only those provisions of the Master Agreement that pertained to USC University Hospital, deleting all references to Tenet. Apparently, this Agreement was administratively prepared by the Incumbent Union without benefit of any prior negotiation with Tenet. This Agreement recognized the two original certified units described above, and further provided that in the event of a sale of USC University Hospital, that this Agreement shall be in full force and effect immediately upon the effective date of the sale, thereby replacing and superseding any previously existing Agreements between the parties. The effective dates for this Agreement were the same as for the Master Agreement, to wit,

January 1, 2007 through March 31, 2011, and it was executed by the Incumbent Union and Tenet.

Thereafter, on about April 1, 2009, USC acquired University Hospital and began to operate it without hiatus in basically unchanged form. Just prior to the effective date of the sale, representatives of the Incumbent Union attended a meeting with representatives of USC and their respective counsel during which USC made statements to the effect that they intended to be bound by the contract and adhere to its language. The Incumbent Union likewise agreed to be bound. However, neither party specified which contact it was referring to (the state-wide Master Agreement or the later Agreement particular to this facility), and nothing was reduced to writing or executed at this or any subsequent meeting.

At the hearing, all parties stipulated that since about April 1, 2009, USC University Hospital recognized the Incumbent Union as the exclusive collective-bargaining representative of the employees in the two units recognized in the Agreement described above. The Incumbent Union and USC University Hospital have continued to abide by the terms and conditions of employment set forth in the Agreement, specifically with respect to the filing and processing of grievances.

B. The Appropriate Unit

The Incumbent Union asserts that the two units certified by the Board in 2004 and subsequently voluntarily recognized by the Employer are no longer appropriate units for the purpose of collective bargaining, and seeks to amend them in two respects.

First, the Incumbent Union asserts that there should be three, rather than two units, based upon significant changes since the original Board certification. Specifically,

the Incumbent Union asserts that several new classifications have been created at USC University Hospital that, had they existed at the time of the certification, would have been included in a third unit.[2] Moreover, the Incumbent Union asserts, there are approximately 50 employees currently working at the Norris Cancer Hospital in the same job classifications as employees currently in the bargaining units at USC University Hospital represented by the Incumbent Union who, in light of the extent of interchange and integration between the two facilities, should also be included in any appropriate unit. Largely anecdotal evidence was presented to support these arguments with respect to the scope of the bargaining unit.

Second, the Incumbent Union argues that any bargaining units be expanded to include certain employees employed at the Norris Cancer Hospital, a separate facility on the USC Medical Campus that, like USC University Hospital, is owned and operated by USC.[3] It is undisputed that the two facilities share the same chief operating executive, chief executive officer, administrator of clinics, and human resources personnel. Also, several departments in the respective hospitals, including but not limited to respiratory therapy, occupational therapy, materials management, and finance, share common directors. No employees at the Norris Cancer Hospital are presently represented by the Incumbent Union. Some limited evidence of interchange between the two facilities was proffered at the hearing, specifically with regard to one endoscopy/gastrointestinal technician and a patient care technician who was assigned there on light duty. Further

[2] The Incumbent Union concedes that it initially agreed to a combined unit of maintenance and technical employees, despite the extant rules setting forth appropriate units in acute care hospitals on the premise that such combined unit was appropriate to the workplace at that time. The Incumbent Union argues that since then, however, changes in the workplace militate in favor of three distinct units.

[3] Norris Cancer Hospital is occasionally referred to in the hearing record as Norris Cancer Center. However, the latter refers to non-licensed facilities located within the Norris Cancer Hospital which are not at issue herein.

evidence of substantial interchange between the two facilities is anecdotal. Apparently, unit employees at USC University Hospital can request to work extra shifts at Norris Cancer Hospital, although actual transfers must be approved and the employee seeking the transfer must complete a new job application. Similarly-classified employees at the respective facilities also receive different wages and benefits. Moreover, the work of employees similarly classified differs because of the focus on cancer treatment and care at the Norris Cancer Hospital.

## IV. POSITIONS OF THE PARTIES

With regard to the contract bar issue, the Petitioner and Employer assert there is no contract bar because no collective-bargaining agreement was negotiated or executed between the Incumbent Union and USC, the current owner of USC University Hospital. The Petitioner and Employer further assert that even if there were a valid collective-bargaining agreement in effect, the effective terms of the agreement are for more than four years and would not therefore serve as a bar to an election.

The Incumbent Union asserts that there is a contract bar by virtue of the Agreement executed by the Incumbent Union and prior owner Tenet, which successor USC orally agreed to be bound by and subsequently honored the terms and conditions contained therein. Assuming the effective date of the Agreement to be the adoption date (April 1, 2009), and not the stated commencement date, this Agreement would be for a period of less than three years and thus would serve as a bar to the instant petition, according to the Incumbent Union.

With regard to the appropriate units, the Petitioner and Employer stipulated that the two units currently represented by the Incumbent Union as set forth in the original

certifications and subsequently voluntarily recognized by Employer are appropriate for the purposes of collective bargaining.[4] These units are:

COMBINED SERVICE, MAINTENANCE, TECHNICAL, AND SKILLED MAINTENANCE UNIT

Included: All full time, regular part-time and per diem service, maintenance, technical, and skilled maintenance employees employed by the Employer at its facility located at 1500 San Pablo Street, Los Angeles, California;

Excluded: All other employees, managers, supervisors, confidential employees, guards, physicians, residents, central business office employees (whether facility-based or not) who are solely engaged in qualifying of collection activities, employees of outside registries and other agencies supplying labor to the Employer and already-represented employees.

PROFESSIONAL EMPLOYEES UNIT

Included: All full-time, part-time and per diem professional employees (except for Registered Nurses and Physicians) employed by the Employer at its facility located at 1500 San Pablo Street, Los Angeles, California;

Excluded: All other employees, managers, supervisors as defined in the Act, office clerical employees, confidential employees, guards, registered nurses, all other professional employees including, without limitation, physicians and residents, Central Business Office employees (whether facility-based or not) who are solely engaged in qualifying or collection activities, employees of outside registries and other agencies supplying labor to the Employer, and already-represented employees.

The Petitioner and the Employer further agreed that there approximately 604 employees in the above-described combined service, maintenance, technical, and skilled maintenance unit, and approximately 82 employees in the above-described professional unit.

[4] These unit descriptions omit any original references to Tenet contained in the certifications.

The Incumbent Union seeks three units consisting of employees employed at both the USC University Hospital and the Norris Cancer Hospital – a service unit, a technical unit, and a professional unit. The proposed units are described in a number of exhibits proffered at the hearing listing various wage scales interlineated with "S" for the proposed service unit, "T" for the proposed technical unit, and "P" for the proposed professional unit. An additional exhibit lists only classifications of employees with the alphabetic designations described above, and no indication as to where these particular employees work. The employees to be excluded from each of the three proposed unit are described as only "standard language" exclusions omitting the employees in the other two proposed units. The Incumbent Union asserts that there are approximately 60 employees employed at the Norris Cancer Hospital and 50 new employees at some unspecified facility, but does not provide aggregated estimates for the number of employees in each of its proposed three bargaining units.

## V. ANALYSIS

### A. Contract Bar

When a petition is filed for a representation election among a group of employees who are alleged to be covered by a collective-bargaining agreement, the Board must decide whether the asserted contract exists in fact and whether it conforms to certain requirements. If the Board finds in the affirmative on both issues, the contact is held a bar to an election: this is known as the contract bar doctrine. *Hexton Furniture Co*., 111 NLRB 342 (1955). The burden of proving that a contract is a bar is on the party asserting the doctrine. *Roosevelt Memorial Park*, 187 NLRB 517 (1970)

Among the requirements for a collective-bargaining agreement to act as a contract bar is the existence of a "collective" agreement that has been freely bargained and has been reduced to writing. *J.P. Sand & Gravel Co*., 222 NLRB 83 (1976); *Frank Hager, Inc*., 230 NLRB 476 (1977). Not only must the contract in question be reduced to writing, but it must be signed by all the parties at the time the representation petition is filed. *Herlin Press*, 177 NLRB 940 (1969). Although the contract-bar doctrine does not require a "formal final document," the relied-upon documents must lay out substantial terms and conditions of employment and must be signed. *Waste Management of Maryland,* 338 NLRB 1002 (2003), and cases cited therein.

In the instant case, the Incumbent Union has failed to meet its burden of showing there is a contract bar. A signed document executed before the filing of a representation petition is still required, even though the parties may consider any discussions to be concluded and have put into effect some or all of its provisions; in fact, even informal documents that are exchanged between the parties must be signed by all the parties in order to serve as a bar to an election. *Appalachian Shale Products Co*., 121 NLRB 1160 (1958). It is undisputed that the only signed agreements in effect are between the Incumbent Union and the predecessor Tenet, and that there is no signed document between the Incumbent Union and USC setting forth terms and conditions of the unit employees. Thus, even though USC may have orally adopted the terms and conditions set forth in the agreement between the Incumbent Union and Tenet, there is no signed document of any kind with USC. [5]

[5] Written or initialed proposals have been found to constitute a contract so as to bar a representation election. *Appalachian Shale Products*, supra. However, in the instant case, the Incumbent Union admitted that there were no proposals – oral or written – exchanged with USC, and that the Agreement proffered as a bar was created solely by the Incumbent Union as an administrative convenience.

Moreover, even if the oral adoption of the terms and conditions of the contract between the Incumbent Union and Tenet were sufficient to constitute a contract bar, the record is unclear as to which agreement was being adopted – the original Master Agreement or the subsequent Agreement specific to USC University Hospital – inasmuch as no particular document was referred to during the meeting between the Incumbent Union and USC.

Even if there were evidence that the parties meant to adopt the terms and conditions of the latter Agreement, it did not contain sufficient substantial terms to serve as a contract bar; specifically, the effective date of the Agreement is unclear. This is evidenced by the Incumbent Union's argument that the adopted Agreement was effective as of the date that USC took over the operation of USC University Hospital, and not as of the effective date stated on the Agreement itself.[6] Generally, the effective dates of an agreement must be apparent from the face of the document, without resort to parole evidence, in order for the contact to serve as a bar to an election. *South Mountain Healthcare & Rehab Center,* 344 NLRB 375 (2005) Such ambiguity regarding the effective date of any contract suggests that there was no meeting of the minds as to the dates the contract was to be in effect, and thus suggests no contract exists. Moreover, in order to serve as a bar to an election, the effective dates of a contract must be ascertainable on its face to enable employees and outside unions to determine the appropriate time to file a petition. *See, i.e., Coca-Cola Enterprises*, 352 NLRB 1044,

[6] The Incumbent Union asserted an effective date later than the date that appears on the face of the Agreement ostensibly to rebut the assertion of the Petitioner and the Employer that the Agreement on its face is a four-year agreement, and no collective-bargaining agreement can bar an election for more than three years. See *Dobbs International Services,* 323 NLRB 1159 (1997). Thus, even assuming the effective dates of the Agreement are consistent with those of the Master Agreement, the Agreement could still not act as a bar.

1045 (2008). In the instant case, the Agreement on its face contains the same dates as the Master Agreement from which its provisions were culled, but the Incumbent Union now asserts a different effective date, thus preventing this Agreement from acting as an effective bar to an election.[7] Where the parties to a contract create a situation in which a petitioner cannot clearly determine the proper time to file a petition, as the parties have done here, the ambiguity cannot benefit the parties and a petition will not be barred thereby. *See, e.g., Cabrillo Lanes*, 202 NLRB 921-23 (1973).

For the foregoing reasons, the cases cited by the Incumbent Union in favor of a contract bar must be rejected. Specifically, there is no evidence that the parties sought an extension of an existing agreement. Incumbent Union cites *Michigan Bell Telephone Co.*, 182 NLRB 632 (1970), as analogous to the instant case. However, in *Michigan Bell*, the parties, during the term of an extant agreement, executed an agreement to include new classifications, which contract had new effective and termination dates rendering the prior contact largely moot and thus not evidencing premature extension. In contrast, the Agreement in the instant case essentially contained the same units recognized in the Master Agreement, and retained the original dates of the Master Agreement as well. More importantly, the Incumbent Union did not cite any evidence that this Agreement – new or not – was ever executed by the Incumbent Union and USC, the parties it now seeks to bind.[8] Thus, this Agreement, which the Incumbent Union conceded was culled from the Master Agreement and whose terms were never negotiated with USC and which

[7] The language of the side agreement reached between the Incumbent Union and predecessor Tenet does not cure this defect, since that language only provides that the Agreement shall be in full force and effect upon the "effective sale of the sale" of the facility, and that language does not provide a specific enough date to allow the Agreement to act as a bar to an election.

[8] Also, the Agreement did not create "new" bargaining units as asserted by the Incumbent Union. Rather, it merely reiterated the two certified units that the Incumbent Union admitted were already recognized by Tenet.

was never executed between the Incumbent Union and USC, cannot serve as a contract bar.

The Incumbent Union argues that should the foregoing *Michigan Bell* exception to the premature extension rule be inapplicable, that the Board consider the rule of *Ideal Chevrolet, Inc.*, 198 NLRB 280 (1972) as dispositive. However, *Ideal Chevrolet* is distinguishable in that successor Ideal Chevrolet actually executed a collective-bargaining agreement with the Union during the term of an agreement with the predecessor. The Board therein found the new contract a bar to a petition filed during the window period of the predecessor's agreement. Unlike Ideal Chevrolet, however, the successor herein never executed a collective-bargaining agreement with the Incumbent Union. As discussed above, an oral commitment to recognize the incumbent union and abide by the terms and conditions of the predecessor's contact is not sufficient to bar a timely petition. Thus, there is simply no evidence that successor USC ever entered into a "new" contract with the Incumbent Union that would serve as a contract bar.

B. The Appropriate Bargaining Units

The parties stipulated that USC University Hospital voluntarily extended recognition to the Incumbent Union in the existing two units described above that were previously certified by the Board, and the Petitioner and the Employer have stipulated that elections be held in these existing units. However, the Incumbent Union now asserts that three distinct units are appropriate.

In determining the appropriateness of a bargaining unit, prior bargaining history is given substantial weight, and the Board is generally reluctant to disturb an established unit. See *Canal Carting, Inc*., 339 NLRB 969 (2003)

While conceding that that Board has long held that there is a strong presumption that the existing bargaining units are the appropriate units for the purpose of conducting elections, the Incumbent Union submits that other factors need be considered in the circumstance of an acute-care hospital like USC University Hospital. Specifically, the Incumbent Union refers to General Counsel Memo 91-3 (May 9, 1991) adopting rules for appropriate units for such hospitals, while conceding that a union has the option under those rules to petition for combined units. The Incumbent Union further concedes that it agreed to a combination of technical, service, and maintenance employees at the time of the original election resulting in the certification of the two units described above.

However, the Incumbent Union now asserts that such significant changes have occurred in the operation of the facility that separate units consistent with the GC Memo are now appropriate. Specifically, the Incumbent Union refers to the creation of new job classifications which USC University Hospital has included into the existing recognized combined unit. However, the record shows only a few new employee classifications and little evidence as to the job duties actually involved or even where these employees work. As such, the Incumbent Union has failed to meet its burden of rebutting the presumption that the existing units are appropriate units.

C. The Scope of the Units

The Incumbent Union seeks to accrete certain employees of Norris Cancer Hospital, an adjacent facility owned by USC whose employees are not currently represented by the Incumbent Union.

The accretion of employees to an existing bargaining unit can be made "only when the additional employees have little or no separate group identity such that they

cannot be considered to be a separate appropriate unit." These additional employees also must share an "overwhelming community of interest" with the preexisting unit to which they are accreted. *Safeway Stores, Inc*., 256 NLRB 918 (1981). The test to accrete employees into an existing unit is generally more rigorous than that used to determine the appropriateness of an initial bargaining unit, inasmuch as the newly accreted employees are merged into the established unit without benefit of expressing their preference in an election. *Towne Ford Sales*, 270 NLRB 311, 312 (1984).

Specifically, the Incumbent Union seeks to add to its proposed units approximately 50 employees currently working at the Norris Cancer hospital in the same classifications as employees currently in the established bargaining units at USC University Hospital based on commonality of supervision and interchange between the two facilities.

The Incumbent Union does not dispute that the Board has established a presumption, albeit a rebuttable one, in favor of a single facility where an employer operates a single, geographically isolated facility as well as other facilities nearby. *Manor Healthcare Corp*., 285 NLRB 224, 226 (1987). The Board traditionally examines a number of factors in determining whether this presumption has been rebutted, the most critical of which are the degree of employee interchange and common day-to-day supervision. *Dean Transportation*, 350 NLRB 48 (2007). There must be systematic and scheduled interchange between the two groups of employees to support accretion. *Safeway Stores*, 256 NLRB 918 (1981 ).

In the instant case, it is undisputed that USC University Hospital and Norris Cancer Hospital are both owned and operated by USC and that they also share common

upper management and some common on-site supervision. However, the anecdotal evidence of sporadic interchange was limited to a handful of employees. Moreover, unlike the cases cited by the Incumbent Union, the employees at the respective facilities herein do not have common wage scales and benefits, nor can they transfer freely between facilities without permission and reapplication. Furthermore, there is evidence that the employees at Norris Cancer Hospital possess distinct skills not shared by those at USC Medical Center, since they deal primarily with patients with cancer.

In view of the foregoing, the Incumbent Union has not met its burden of showing that certain employees at another facility owned by USC should be part of an appropriate unit herein.

The Incumbent Union also seeks to expand the scope of the previously-certified and recognized units described above by adding employees in classifications that it asserts have been created since the last collective-bargaining agreement between the Incumbent Union and Tenet. In determining whether a new classification properly belongs in a bargaining unit, the Board examines whether the new classifications perform the basic bargaining-unit functions so as to be viewed as belonging to the unit, rather than being accreted into the unit. *Premcor*, 333 NLRB 1365 (2001). If the respective duties are not the same, then the Board examines whether there is sufficient community of interest between the two groups so as to justify accretion of the new classifications. Id.

The Incumbent Union presented little evidence that these new classifications were either performing the same work as the current bargaining-unit employees, or that they had sufficient community of interest so that they should be part of an appropriate bargaining unit. Anecdotal evidence based on personnel observation of outsiders and

hearsay about employees' duties is not sufficient to meet the Incumbent Union's burden in this regard.

## VI. CONCLUSION

The record supports a finding that neither the Master Agreement nor the subsequent Agreement executed between the Incumbent Union and the predecessor Tenet serve to bar the instant petition. There is insufficient evidence of a signed collective-bargaining agreement or other executed documents clearly setting forth the effective dates of any agreement between the Incumbent Union and the successor employer USC.

Based on the foregoing, I conclude that there is no contact bar to the instant petition. I further conclude, based on the evidence and record as a whole, that the petitioned-for two units of employees employed by the Employer at the USC University Hospital are appropriate units, and that the Incumbent Union has not met its burden to rebut the presumption in favor of these units insofar as expanding them to include new employees, additional units, or other facilities.

## VII. FINDINGS

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[9]

2. The parties stipulated that USC University Hospital, a California corporation with principal offices and an acute-care hospital located at 1500 San Pablo Street, Los Angeles, California, the only facility involved herein, is engaged in providing healthcare services. During the past 12 months, a representative period, the Employer

[9] The Incumbent Union made a motion at the hearing to continue the hearing and to block the election based upon unfair labor practice charges in Case 21-CA-39515. This issue was administratively addressed by the undersigned by letter February 2010.

derived gross revenues in excess of $250,000 from the operation of its acute-care hospital, and, during the same period of time, purchased and received goods valued in excess of $5,000, which goods were shipped directly to the Employer's Los Angeles, California, facility from points located outside the state of California.

3. National Union of Healthcare Workers, hereinafter called the Petitioner, is a labor organization within the meaning of the Act.

4. Service Employees International Union, United Healthcare Workers West, hereinafter called the Incumbent Union, is a labor organization within the meaning of the Act.

5. I find that the following units are the appropriate units for the purposes of collective-bargaining:

Unit A

COMBINED SERVICE, MAINTENANCE, TECHNICAL, AND SKILLED MAINTENANCE UNIT

Included: All full time, regular part-time and per diem service, maintenance, technical, and skilled maintenance employees employed by the Employer at its facility located at 1500 San Pablo Street, Los Angeles, California;

Excluded: All other employees, managers, supervisors, confidential employees, guards, physicians, residents, central business office employees (whether facility-based or not) who are solely engaged in qualifying of collection activities, employees of outside registries and other agencies supplying labor to the Employer and already-represented employees.

Unit B

PROFESSIONAL EMPLOYEES UNIT

Included: All full-time, part-time and per diem professional employees (except for Registered Nurses and Physicians) employed by the Employer at its facility located at 1500 San Pablo Street, Los Angeles, California;

Excluded: All other employees, managers, supervisors as defined in the Act, office clerical employees, confidential employees, guards, registered nurses, all other professional employees including, without limitation, physicians and residents, Central Business Office employees (whether facility-based or not) who are solely engaged in qualifying or collection activities, employees of outside registries and other agencies supplying labor to the Employer, and already-represented employees.

## DIRECTION OF ELECTION

The National Labor Relations Board will conduct secret ballot elections among the employees in the units found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **National Union of Healthcare Workers; Service Employees International Union, United Healthcare Workers-West; or neither.** The dates, times, and places of the elections will be specified in the notices of election that the Board's Regional Office will issue subsequent to this Decision.

### A. Voting Eligibility

Eligible to vote in the election are those in the units who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote.

In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office election eligibility lists, containing the full names and addresses of all the eligible voters in each unit. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). These lists may initially

be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the lists must be received in the Regional Office on or before **May 3, 2010**. No extension of time to file the lists will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists.

Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted to the Regional Office by electronic filing through the Agency's website, **www.nlrb.gov**,[10] by mail, or by facsimile transmission at (213) 894-2778. The burden of establishing the timely filing and receipt of the lists will continue to be placed on the sending party.

Since the lists will be made available to all parties to the election, please furnish a total of **four** copies of each list, unless the lists are submitted by facsimile or e-mail, in which only **one** copy of each list need be submitted. If you have any questions, please contact the Regional Office.

**C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received

[10] To file the eligibility list electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

copies of the election notice. *Club Demonstration Service*s, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **May 10, 2010.** The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov,[11] but may not be filed by facsimile.

**DATED** at Los Angeles, California, this 26th day of April, 2010.

/s/ William M. Pate Jr.
William M. Pate, Jr.
Acting Regional Director, Region 21
National Labor Relations Board

[11] To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlrb.gov.